

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SHELDON COOPER, JR.,

Plaintiff,

v.

9:18-CV-0762
(GTS/CFH)

A. ANNucci, et al.,

Defendants.

APPEARANCES:

SHELDON COOPER, Jr.
16-A-5117
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871
Plaintiff pro se

CHRISTIAN F. HUMMEL
United States Magistrate Judge

DECISION AND ORDER

I. INTRODUCTION

Plaintiff Sheldon Cooper, Jr. commenced this action by filing a pro se complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application to proceed in forma pauperis ("IFP"). Dkt. No. 1 ("Compl."); Dkt. No. 5 ("IFP Application").¹ By Decision and Order filed August 30, 2018, plaintiff's IFP Application was granted and, upon review of the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), some of

¹ Plaintiff's initial application to proceed IFP was denied as incomplete and the action was administratively closed. Dkt. No. 4. Plaintiff then timely and properly filed his IFP Application, and this action was re-opened. Dkt. Nos. 5, 6.

plaintiff's claims and defendants were dismissed and the Court directed service and a response for the claims that survived sua sponte review. See Dkt. No. 7 (the "August 2018 Order"). In addition, pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d. Cir. 1997) (per curiam), the New York State Attorney General's Office was directed to attempt to ascertain the identities of Jane Doe #2, John Doe #3, and John Doe #6. See id. at 45-48.

On September 26, 2018, a representative from the New York State Attorney General's Office submitted a Letter Brief regarding the identities of Jane Doe #2, John Doe #3, and John Doe #6. See Dkt. No. 9 ("Letter Brief"). By Order filed September 27, 2018, plaintiff was directed to review the Letter Brief, and, to the extent he was able to do so, submit a proposed amended complaint which substitutes any identifiable defendant in place of the appropriate "Doe" defendant, and which makes any other corrections necessary. See Dkt. No. 10.

Presently before the Court for review is plaintiff's amended complaint. Dkt. No. 12 ("Am. Compl.").

II.DISCUSION

The factual assertions set forth in the amended complaint are identical in content to those set forth in the original complaint, except that plaintiff now identifies Jane Doe #2 as "Kim Randolph," John Doe #3 as "Christopher Corp," and John Doe #6 as "Lt. Juan Soto." Compare Compl. with Am. Compl.

In light of the August 2018 Order, and mindful of the Court's requirement to liberally construe pro se pleadings, see, e.g., Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 191 (2d Cir. 2008), the amended complaint is accepted for filing and replaces the complaint in its

entirety.

III.CONCLUSION

WHEREFORE, it is hereby

ORDERED, that plaintiff's amended complaint (Dkt. No. 12) is **ACCEPTED** for filing and is the operative pleading in this action; and it is further

ORDERED, that the Clerk shall revise the docket to add "Kim Randolph" as a defendant in place of defendant "Jane Doe #2," add "Christopher Corp" as a defendant in place of defendant "John Doe #3," and add "Lt. Juan Soto" as a defendant in place of defendant "John Doe #6"; and it is further

ORDERED, that the following claims **SURVIVE** sua sponte review and require a response: (1) plaintiff's excessive force and failure-to-intervene claims against defendants Cashin and Sergeant Smith; and (2) plaintiff's retaliation claims against defendants Degraff, Sergeant Smith, Randolph, Corp, Payne, Withers, Corey, Seymour, Soto, Stanton, and Cashin; and it is further

ORDERED, that, upon receipt from plaintiff of the documents required for service of process, the Clerk shall issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service on defendants Degraff, Sergeant Smith, Randolph, Corp, Payne, Withers, Corey, Seymour, Soto, Stanton, and Cashin, together with a copy of this Order;² and it is further

ORDERED, that a response to the amended complaint be filed by defendants Degraff,

² The Court previously granted plaintiff leave to proceed with this action IFP. See August 2018 Order.

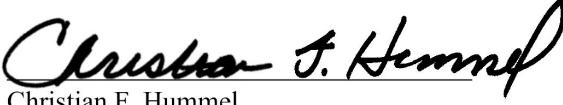
Sergeant Smith, Randolph, Corp, Payne, Withers, Corey, Seymour, Soto, Stanton, and Cashin, or their counsel, as provided for in the Federal Rules of Civil Procedure; and it is further

ORDERED, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so may result in the dismissal of this action; and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Dated: November 16, 2018
Albany, New York


Christian F. Hummel
U.S. Magistrate Judge